



04 MAY 2009

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

John K. McDonald, Ph.D.
Kilpatrick Stockton
1100 Peachtree Street
Suite 2800
Atlanta GA 30309

In re Application of:
LUBITZ, Werner, et al.
U.S. Application No.: 09/914,864
PCT No.: PCT/EP00/01906
International Filing Date: 03 March 2000
Priority Date: 05 March 1999
Atty Docket No.: 48498-263411
For: BACTERIAL GHOSTS AS
CARRIER AND TARGETING
VEHICLES

DECISION ON PETITION

This decision is issued in response to the "Status Inquiry And Resubmission Of Previously Filed Petition For Reinstatement" filed 16 March 2009, treated herein as a petition under 37 CFR 1.181 to withdraw the holding of abandonment. No petition fee is required.

BACKGROUND

On 03 March 2000, applicants filed international application PCT/EP00/01906. The application claimed a priority date of 05 March 1999, and it designated the United States. On 14 September 2000, the International Bureau (IB) communicated a copy of the international application to the United States Patent and Trademark Office (USPTO).

On 11 August 2000, prior to the expiration of 19 months from the priority date, applicants filed a Demand for International Preliminary Examination electing the United States. Accordingly, the deadline for requesting entry into the national stage in the United States and submission of the basic national fee was extended to thirty months from the priority date, i.e., 05 September 2001.

On 04 September 2001, applicants filed a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the small entity basic national fee and an English translation of the international application.

On 03 December 2001, applicants filed an executed declaration in compliance with 37 CFR 1.497.

On 18 March 2003, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Abandonment (Form PCT/DO/EO/909) indicating that the application was

abandoned because applicant “has failed to provide the Copy of the International Application by 20 months (37 CFR 1.494(b)(2)).”

On 16 March 2009, applicants filed the “Status Inquiry And Resubmission Of Previously Filed Petition For Reinstatement” considered herein. The submission asserts that applicants originally filed the enclosed “Request For Reinstatement Of Application” on 08 April 2003, as evidenced by the enclosed return postcard that itemizes the Request and bears a USPTO receipt stamp dated 08 April 2003.¹ The Request For Reinstatement argues that the holding of abandonment herein was made in error in that applicants timely filed the requirements for entry into the U.S. national stage on 04 September 2001.

DISCUSSION

As set forth above, based on applicants’ timely filing of a Demand for International Preliminary Examination electing the United States, the deadline for national stage entry in the United States was extended to 30 months from the priority date, that is, 05 September 2001. Accordingly, the 20-month deadline referenced in the “Notification Of Abandonment” (Form PCT/DO/EO/909) was not applicable to the present application. The “Notification Of Abandonment” (Form PCT/DO/EO/909) mailed 18 March 2003, based as it was on a 20-month deadline not applicable to the present application, is therefore appropriately withdrawn, as requested by applicants in the present petition.

A review of the application file confirms that applicants filed the request for national stage entry and basic national fee payment on 04 September 2001, prior to the expiration of 30 months from the priority date. Applicants’ 04 September 2001 submission also included the required English translation of the international application, and, on 03 December 2001, applicants filed the required declaration.² Thus, the requirements of 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) were completed on 03 December 2001.

CONCLUSION

The petition to withdraw the holding of abandonment is **GRANTED**.

The Notification Of Abandonment (Form PCT/DO/EO/909) mailed 18 March 2003 is hereby **VACATED**.

¹ The submission also includes a copy of a “Status Inquiry” regarding the Request for Reinstatement that was originally filed on 14 July 2003, as evidenced by a return postcard itemizing the Status Inquiry and bearing a USPTO receipt stamp dated 14 July 2003.

² As noted by applicants in the present petition, the required copy of the international was communicated to the USPTO by the IB.

This application is being referred to the National Stage Processing Branch of the International Division for further processing in accordance with this decision. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 03 December 2001.

A handwritten signature in black ink, appearing to read 'RM Ross', written in a cursive style.

Richard M. Ross

Attorney Advisor

Office of PCT Legal Administration

Telephone: (571) 272-3296

Facsimile: (571) 273-0459